

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
07/11/2001

*** FILED ***
07/19/2001
CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000099

Docket Code 019

FILED: _____

STATE OF ARIZONA
v.
RUTH Q BROWN

JOHN E HUDSON

RUTH Q BROWN
3438 E CAMPO BELLO
PHOENIX AZ 85032-0000

PARADISE VALLEY
MAGISTRATE COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PARADISE VALLEY CITY COURT
Cit. No. #0250053A
Charge: A. UNREASONABLE SPEED
DOB: 07/08/35
DOC: 12/14/00

The Appellant, Ruth Q. Brown, was charged with the civil traffic violation of A.R.S. Section 701 (unreasonable speed) as a result of Appellant's vehicle being photographed by a photo radar unit the afternoon of December 12, 2000. Upon receiving the citation in the mail, Appellant accepted service of the complaint and entered a plea of not responsible. The matter came to trial on February 5, 2001 before Judge Elliott, a magistrate for the town of Paradise Valley, where Appellant was found responsible and a civil sanction of \$130.00 was imposed. Appellant filed a timely notice of appeal and this Court properly has jurisdiction pursuant to *Ariz. Const. Art. VI, Section 16*, and *A.R.S. Section 12-124(a)*. Appellant has raised two issues in her memorandum that warrant attention:

- 1) Appellant contests the facts and evidence as generally presented by the police officer who testified on the town's behalf, and the plausibility of the charge generally; and

2) Appellant contends that her right to present her testimony as secured by the 14th Amendment to the United States Constitution with respect to the reasonableness (or unreasonableness) of her speed was denied by the court.

Concerning the Appellant's first issue of contention, this Court will not retry the facts on appeal. Appellate courts do not sit as secondary finders of fact.¹ Moreover, the reviewing court must look at the facts in the light most favorable to sustaining the judgment rendered by the trial court.² Here, the evidence presented was deemed acceptable by both parties in the original trial, and no objections to them were noted in the taped transcript. This Court cannot conclude that the facts and evidence presented in the trial court are unreasonable or erroneous.

Appellant's second contention that her due process rights were impinged requires additional scrutiny. Appellate courts review trial courts judgments based on the ultimate question of whether legal procedure was followed in a trial.

The particular statute that Appellant stands charged with violating provides that "A person shall not drive a vehicle on the highway at a speed greater than is **reasonable and prudent** under the circumstances"³ (emphasis added). Appellant claims that the trial court erroneously barred her from testifying as to the reasonableness of her speed given the conditions on the day of which she was driving. Arizona Rules of Civil Procedure for Civil Traffic Cases provide for the testimony of defense witnesses in a civil traffic case. The Appellant contends that she was not allowed to rebut the prosecution's reliance on the unreasonableness of her speed. Arizona case law provides that "[S]tatutory provisions that establish or permit the establishment of prima facie evidence . . . raise rebuttable presumptions, which may be overcome by evidence."⁴

This Court takes seriously the commitment to maintaining the qualities of a fair trial. Foremost among these is the right to due process. Appellant claims that in her brief that her 14th Amendment rights to due process were violated. Yet Appellant also has protection in Article II, Section 4 of the Arizona Constitution which provides for identical protective rights. Upon review of the trial transcript, the Appellant appeared to have just begun the process of her testimony when she and the magistrate began to argue over a trivial point. The magistrate then proceeded to halt the trial and delivered the verdict, without giving the Appellant ample opportunity to present her case. This result seems to contradict principles of fundamental fairness and due process. Additionally, where a defendant has been denied an essential component of due process, such denial constitutes fundamental error.⁵

¹ See *State v. Lawrence*, 123 Ariz. 301, 599 P.2d 754 (1979).

² *Galbraith v. Coury Bros. Ranches, Inc.*, 9 Ariz.App. 137, 449 P.2d 974 (1969).

³ A.R.S. Section 28-701(A)

⁴ *State v. Rich*, 115 Ariz. 119, 563 P.2d 918 (App.1977)

⁵ See *State v. Flowers*, 159 Ariz. 469, 768 P.2d 201 (App. 1989).

For reasons that the Appellant was denied her right to testify concerning the reasonableness of her speed and the lack of occasion to present fully her defense,

IT IS ORDERED reversing the judgment of responsibility and the sanction imposed in the Paradise Valley Municipal Court.

IT IS FURTHER ORDERED remanding the matter for a new trial in the same trial Court.